

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 323 of 1978

Between:

PETER ANTHONY LOMAS

Plaintiff

- and -

FREDERICK CAINE

Defendant

Mr. A. Singh with Anil Singh for the Plaintiff

Mr. Parmanandam for the Defendant

JUDGMENT

This is an action for slander although the indorsement on the writ of summons states the claim is for damages for libel. The indorsement and the statement of claim make it clear however that the plaintiff complains about words allegedly spoken about him and published by the defendant at the Trade-winds Convention Centre Lami.

It is not in dispute that the plaintiff was at all material times a journalist employed by the Fiji Sun newspaper.

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At the time when the defendant addressed the meeting and spoke the words the plaintiff complains about the subject under discussion was the promotion of racial harmony in Fiji which is without doubt a matter of public interest.

The defendant's defence is that the words were fair comment on a matter of public interest namely the promotion of multi-racial harmony in Fiji and further that the words were true in substance and fact.

In his defence the defendant gave particulars of the facts on which he relied in support of his defence of justification. The particulars are as follows:

" PARTICULARS

- (a) That over the period between December, 1977 till August, 1978 the Plaintiff has written a series of articles which have caused concern in that it has tendered to put one racial group up against another and thereby generating a feeling of hatred amongst the groups in question. "

There is no doubt that the defendant was referring to the plaintiff when he spoke at the meeting and that the words were spoken of the plaintiff in relation to his profession as a journalist. The plaintiff is specifically named and there is reference to "people who write these articles".

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prove the truth of every allegation of fact if the expression of opinion is fair comment having regard to such of the facts as are proved. Where there is any defamatory meaning in any of the facts on which comment is based a defendant must plead and prove a justification.

So far as a plea of justification is concerned as Collins M.R. said in Digby v. Financial News Ltd. [1907] 1 K.B. at p. 509 "a plea of justification means that all the words were true and covers not only the bare statements of facts in the alleged libel but also any imputations which the words in their context may be taken to convey".

In pleas of both fair comment and justification the burden of establishing the defence is on the defendant.

The facts stated by the defendant in the words he used are the following:

1. The plaintiff had sowed the seed of hatred in the sport of basketball.
2. He had caused racial hate in rugby, football and professional boxing.

These alleged facts were alleged to be the result of articles the plaintiff was alleged to have written. If the defendant establishes that these facts are true his comment on them, if fair, would be fair comment on a matter of public interest and

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It is not sufficient for the defendant to express his views on articles published in the Sun which may or may not have been written by the plaintiff and relate that there was a fight between two sporting teams at a night club and that a Fiji Sun report was involved and that a Sun reporter named Maika had been assaulted and died as a result. Nor does evidence that the plaintiff was in danger of being assaulted at an interdistrict basketball tournament at Easter 1978 assist the defendant. He pleaded but did not attempt to prove that the plaintiff had written a series of articles that tended to create racial trouble between groups of people.

The plaintiff succeeds in his claim and is entitled to damages and the question is what is the measure of the damages.

The defendant's comments were a vicious unjustified slander of the plaintiff in his profession as a journalist. The plaintiff is the sports editor of the Sun and an expatriate and the remarks were made in the presence of the Minister responsible for Immigration who would be concerned whether the plaintiff could remain in Fiji. The defendant advocated that persons who wrote in the manner the plaintiff was alleged to have written should be sent out of the country.

The defendant is a Member of Parliament and his utterances would carry more weight with people whom he addressed than the

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manner in which the words were spoken they no doubt conveyed to those who heard them that they were the comments of a politician who was overborne by personal feelings to such an extent as to make some of his comments barely intelligible. I confess I am quite unable to follow the remarks of the defendant in reference to the Mundine Fossie Schmidt boxing fight and how those remarks bolstered his statement that the plaintiff by his articles created racial hatred in sport. Nevertheless the offending remarks referring to the plaintiff were explicit.

Damages awarded in libel actions are of little assistance when it comes to considering damages for slander. The written word can cause more injury than the spoken word and in some quarters it is believed that the spoken word can cause little injury. That is not the view of the law which in cases such as the instant one presumes general damages flow from such a slander.

In a multi racial society like Fiji harmonious relations between races is essential to good government. Government has legislated to ensure that good relations shall be maintained. Section 17(1)(a)(i) of the Public Order Ordinance 1969 makes it an offence to incite racial dislike or hatred by means of words spoken or intended to be read. The defendant's words went further than stating the plaintiff was inciting racial hatred, he stated as a fact that the plaintiff by his articles had caused racial hatred.